

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 7  
 Bill Version: CSSB 74(JUD)  
 (S) Publish Date: 5/5/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title "Act making findings relating to marijuana use RDU Probation and Parole  
and possession; relating to marijuana ...." Probation and Parole Directors Ofc  
 Sponsor Rules Committee  
 Requester \_\_\_\_\_ Component No. 2684

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health	*	*	*	*	*	*
Other (Specify Type--Do not abbreviate)	*	*	*	*	*	*
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

**ANALYSIS:** (Attach a separate page if necessary)

The legislation proposes new statutory language that delineates findings regarding the mental and physical health risks, illegality and dangers of marijuana use. The bill makes changes to AS 11.71.030, .040, .050, .060 concerning the crime of misconduct involving a controlled substance by adding additional offenses, decreasing the amount of marijuana in possession that would constitute a violation, and increasing the penalties for possession, use and delivery of marijuana. Although most of the conduct prohibited in this bill already is a crime in Alaska, changes are proposed that will increase penalties for certain criminal activity. The legislation decreases from one pound to four ounces the amount of marijuana sufficient to constitute a felony under AS 11.71.040. The bill also creates new offenses related to marijuana possession in a vehicle and raises the penalties for certain delivery offenses. (continued)

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**BILL NO.**                      **CSSB 74(JUD)**

**ANALYSIS CONTINUATION**

The penalty is increased from a misdemeanor to a class B felony for certain delivery of marijuana offenses, including any amount delivered to a person under 21 years of age. These changes may increase the number of cases and the length of some sentences upon conviction, but accurate projections are extremely difficult to assess.

In 2003 and 2004, the Department of Corrections (DOC) incarcerated the following number of offenders charged with, and/or convicted of crimes similar to those being changed or expanded under the legislation.

AS 11.71.040, Misconduct involving a controlled substance in the fourth degree, a class C felony (MICS 4): DOC data shows that in 2003, DOC booked 1,617 individuals into its facilities who were charged with an offense under AS 11.71.040, and 646 of those individuals were later convicted of a crime under AS 11.71.040. In 2004, 1599 were booked, and 618 were convicted. Convicted offenders received an average composite sentence of 1.5 years and 2.07 years respectively. The "composite sentence" is the total sentence imposed for all crimes with which a defendant was convicted, and is not the best measure of the impact of sentencing for a specific crime. To measure sentences without unduly complicating the analysis, it is best to focus on cases in which the drug crime was the most serious charge of conviction, and that was done with data supplied by the Department of Law (DOL). AS 11.71.040 covers criminal activity involving a variety of controlled substances, including cocaine, heroine, methamphetamine and other illegal drugs, in addition to marijuana. DOL data shows that only 15% of the cases where the most serious charge of conviction under AS 11.71.040 involved marijuana (with the vast majority involving growing, selling or possessing with intent to sell one ounce or more, which is not changed by the legislation). An analysis of data that focused specifically on offenders convicted of possessing more than one pound of marijuana showed that most received a suspended imposition of sentence (SIS), with only a few serving minimal jail time, and probation ranging from two to three years. It seems reasonable to conclude that sentences will be similar, or lower for possession of only 4 to 16 ounces.

AS 11.71.050, Misconduct involving a controlled substance in the fifth degree, a class A misdemeanor (MICS 5): In 2003, DOC booked 114 individuals, and 66 convictions. In 2004, 98 bookings and 186 convictions. Offenders received an average composite sentence of 1.0 years and 1.1 years respectively. Again, most cases involving marijuana were for growing, selling or possession with intent to sell. Only 10-12 cases (over the two year period) involved possession of ½ pound to one pound; offenders generally served no jail time, with some serving 10-30 days in jail, with periods of probation ranging from one to three years. Under the legislation, these dozen or so offenders may be prosecuted for MICS 4, and would probably receive sentences similar to those currently being sentenced under AS 11.71.040.

AS 11.71.060, Misconduct involving a controlled substance in the sixth degree, a class B misdemeanor (MICS 6): In 2003, DOC booked 652 individuals, and 186 convictions. In 2004, 593 bookings, and 99 convictions. Offenders received an average composite sentence of .79 years and .71 years respectively. According to DOL data, the vast majority of offenders are convicted as a result of public possession. By far the most common scenario, comprising upwards of 90% of the cases, is possession of marijuana in a motor vehicle, as a result of the driver being stopped for a traffic violation. Although the bill creates new misdemeanor penalties for having marijuana in cars, it remains to be seen if the new crimes will result in any increase in sentences in light of the fact that such conduct is already being charged under current law and very few cases result in jail time.

Cases involving in-home possession of four ounces to ½ pound of marijuana are quite rare, again because persons with that volume of marijuana are usually convicted of MICS 4 or 5 for growing, selling or possessing with intent to sell. MICS 6 cases involving in-home possession of fewer than four ounces of marijuana are rare and are generally dismissed. There is no indication that there will be a significant change in the way police agencies deal with in-home possession cases involving fewer than four ounces. Most cases will never come to the attention of prosecutors unless some other crime brings the police to the residence. In any event, cases of in-home possession of fewer than four ounces would become MICS 5 under the bill. Because MICS 5 cases involving possession of a ½ pound to one pound of marijuana ordinarily receive suspended sentences or very short periods of jail time, the department has no reason to expect any significant change in sentences for amounts involving fewer than four ounces.

**Conclusion:**

It is unknown at this time what effect increasing the penalties for the use of marijuana may have in Alaska. According to the Department of Law, economic studies have shown that in other jurisdictions, increasing the penalties did have a deterrent effect due to the increased perception of the risk of using the drug. At this time, it cannot be predicted whether passage of this legislation will have the effect of reducing the usage of marijuana, and possibly reducing marijuana arrests and prosecutions, but it very well may. Therefore, it cannot be determined with any accuracy what the fiscal impact may be to the Department of Corrections. Although the changes proposed in the legislation likely will have some impact to the Division of Probation and Parole, Department of Corrections due to a potential increase in the number of felons under probation and/or parole supervision, the extent of that impact is too speculative to support a defined fiscal note at this time, and therefore it is indeterminate. However, if the impact proves to be significant, the department will return to the legislature with a request for additional funding.